

Proceeding: **IN THE MATTER OF DEPLOYMENT OF WIRELINE SERVICES OFFERING A** Record 1 of 1
Applicant Name: **Central Texas Telephone Cooperative, Inc.**
Proceeding Name: **98-147** Author Name: **Caressa D. Bennet** 5000600789
Lawfirm Name: **Bennet & Bennet, PLLC**
Contact Name: **author_name** Contact Email: **cbennet@bennetlaw.com**
Address Line 1: **1019 Nineteenth St., NW, Suite 500**
Address Line 2: _____
City: **Washington** State: **DC**
Zip Code: **20036** Postal Code: _____
Submission Type: **CO** Submission Status: **ACCEPTED** Viewing Status: **UNRESTRICTED**
Subject: _____
DA Number: _____ Exparte Late Filed: ☐ File Number: _____
Calendar Date Filed: **09/25/1998 4:37:07 PM** Date Disseminated: _____ Filed From: **INTERNET**
Official Date Filed: **09/25/1998** Date Released/Denied: _____ Initials: _____
Confirmation # **1998925281567** Date Filed: _____

DOCKET FILE COPY ORIGINAL

INTERNET FILING

98-147
9/25/98

RECEIVED

SEP 25 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

No. of Copies rec'd _____
List A B C D E

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

To: The Commission

COMMENTS OF CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.

Caressa D. Bennet
Michael R. Bennet

Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 530-9800

Attorneys for Central Texas Telephone Cooperative,
Inc.

Dated: September 25, 1998

TABLE OF CONTENTS

SUMMARY

I. INTRODUCTION.....	2
II. DISCUSSION.....	3
1. Flexible Affiliate Rules for Rural ILECs Will Further the Deployment of Advanced Service in Rural Regions.....	3
2. Section 251(f) Does Not Provide the Regulatory Certainty Necessary to Encourage the Provision of Advanced Services in Rural Areas.....	6
3. The FCC Should Continue its “Hands-Off” Internet Policy.....	7
4. Rural ILECs Should be Permitted Flexibility in Transferring Network Elements and Other Assets to Their Advanced Services Affiliates.....	7
5. The Commission Should Ease Loop Rules for Rural ILECs.....	8
6. InterLATA Relief for Bell Companies is Unnecessary.....	9
III. CONCLUSION.....	10

SUMMARY

Section 706 of the Telecommunications Act of 1996 promises to “encourage the deployment on a reasonable and timely basis of advanced telecommunications services to all Americans.”¹ Unfortunately, the Commission’s *NPRM* fulfilling the Section 706 mandate destroys this promise for rural America. Central Texas Telephone Cooperative, Inc. (“CTTC”), a small rural telephone cooperative, has been providing the remote and desolate region of central Texas with advanced telecommunications infrastructure for decades. Likewise, throughout the country, other rural telephone companies have been leading the way in the provision of advanced services to the isolated rural customers and businesses that need broadband access the most to bridge the distance gap between urban and rural areas.

The Commission’s proposed separate affiliate rules are not a viable option around the Section 251(c) interconnection burden. Only large local exchange carriers (“LECs”) will be able to take advantage of the “truly” separate affiliate rule. Small, rural LECs do not have the scope and scale to afford separate officers, equipment, and buildings. Rural LECs, like the large LECs, need a viable option in order to avoid the Section 251(c) obligations that are a disincentive to investment. Also, large LECs should not be allowed interLATA flexibility in order to dip into rural territories to target the most lucrative data customers.

The Commission must create flexible affiliate rules for rural LECs to allow them to continue the progress they have made in the deployment of advanced services. The Commission should bear in mind the difficult and inherently fragile universal service nature of even the provision of plain old telephone service in rural regions as it crafts its rules in this proceeding.

¹47 U.S.C. § 706(a).

With the removal of regulatory barriers, CTTC and other rural carriers can continue to fulfill the mandate of Section 706.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

To: The Commission

COMMENTS OF CENTRAL TEXAS TELEPHONE COOPERATIVE, INC.

Central Texas Telephone Cooperative, Inc. ("CTTC"), by its attorneys, hereby respectfully submits these comments in response to the *Notice of Proposed Rulemaking* ("Notice" or "NPRM") associated with the above-captioned proceeding.² CTTC supports the Federal Communications Commission's ("FCC" or "Commission") efforts to promote and "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."³ CTTC itself is committed to the provision of advanced services⁴ to meet the burgeoning broadband demand in rural central Texas and continues to invest in the infrastructure necessary to provide such services. Unfortunately, the threat of Section 251(c) interconnection is a deterrent to more investment if CTTC knows it might have to unbundle its advanced network for use by a competitor. In recognition of this threat, the FCC offers incumbent local exchange carriers

²*Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 98-188, CC Docket No. 98-147 (rel. August 7, 1998).

³47 U.S.C. § 706(a).

⁴CTTC also provides its local school system with the latest in advanced telecommunications infrastructure. CTTC's commitment to its schools was demonstrated well in advance of the Telecommunications Act of 1996. CTTC is now committed to continuing its provision of "advanced telecommunications capability" to its elementary and secondary schools in accordance with 47 U.S.C. § 706(c).

(“ILECs”) an “optional alternative pathway” of a “truly” separate affiliate to avoid unbundling and resale.⁵ Unfortunately, a small rural ILEC such as CTTC is unable to comply with the strict affiliate requirements proposed by the Commission due to the unique and inherently small-scale characteristics of rural telecommunications. Therefore, CTTC respectfully requests that the Commission provide small rural ILECs with a flexible and viable affiliate option that will allow them to continue the provision of advanced services in rural America.

1. INTRODUCTION

⁵*NPRM* at ¶ 83.

CTTC is a rural telephone cooperative that services the remote rural region of central Texas. CTTC has approximately 7,000 access lines spread over 3,302 square miles. CTTC, like most rural carriers, is a leader in the implementation and development of advanced networks. CTTC's network includes fiber optic cable, state of the art digital switches, and outside plant upgrades using fiber and next generation Digital Loop Carriers ("DLC"). CTTC is "setting the stage" to provide broadband capabilities to the rural regions of central Texas. CTTC also runs a cellular network and provides wireless cable television. As part of its demonstrated commitment to broadband services, CTTC purchased a local multipoint distribution service ("LMDS") license which was recently granted by the Commission.⁶ CTTC is convinced that there are viable LMDS applications in rural regions and has been studying such applications in rural Canada. It is highly unlikely that any large telecommunications provider would risk bringing LMDS to rural Texas. CTTC must be able to do so without the threat of having to eventually unbundle this broadband service.

CTTC, like most other rural telecommunications providers, is at the forefront of the advanced telecommunications revolution. Advanced telecommunications capabilities are the catalyst of growth in central Texas. They are essential to both businesses and residents, and bridge the "distance gap" between urban and rural areas. CTTC is concerned that the *NPRM* perpetuates the misconception that rural regions are lacking in advanced infrastructure. This is not true in central Texas, as well as most other rural regions throughout the country.

2. DISCUSSION

⁶Public Notice DA 98-1938 (rel. September 24, 1998).

1. **Flexible Affiliate Rules for Rural ILECs Will Further the Deployment of Advanced Services in Rural Regions**

The provision of telecommunications services in high cost central Texas, where the topography is rough and conditions are extreme, is no easy task. CTTC is a practiced veteran in the provision of advanced services in this remote, thinly populated region. If the Commission truly intends that advanced technology is "timely" deployed to "all Americans,"⁷ it must remove regulatory barriers such as the proposed affiliate requirements, which will prevent CTTC from continuing its advances.

⁷47 U.S.C. § 706(a).

In the *NPRM*, the FCC proposed an “alternative pathway” for ILECs to provide advanced services.⁸ Specifically, the Commission proposed that ILECs could offer advanced services free from the obligations imposed upon on them by Section 251(c) of the Telecommunications Act of 1996⁹ “through an affiliate that is truly separate from the incumbent.”¹⁰ CTTC does not have the size, scope, or luxury to create a “truly” separate affiliate for its provision of advanced services. CTTC believes that since the Commission is “committed to ensuring that an optional alternative pathway is available for incumbent LECs,”¹¹ the Commission can construct a more flexible and viable affiliate option for rural ILECs that takes into account the inherent structural differences between rural ILECs and larger, urban and suburban ILECs.

Under the Commission’s proposal, in order to qualify as a separate advanced services affiliate, such affiliate and the rural telephone company must have separate officers, directors, employees, and buildings.¹² In addition, an advanced services affiliate must not obtain credit under any arrangement that would permit a creditor to have recourse against the assets of the

⁸*NPRM* at ¶ 83.

⁹47 U.S.C. § 251(c).

¹⁰*NPRM* at ¶ 86.

¹¹*Id.*

¹² *NPRM* at ¶ 96.

rural telephone company.¹³ These requirements run contrary to the very business plans CTTC uses and plans to use to continue its buildout of advanced telecommunications infrastructure.

With respect to separate personnel, CTTC lacks the economy of scale necessary to support separate employees. It does not make sense to hire a staff of five or six people simply to provide new advanced services to customers when CTTC's staff at hand is able to do so at a significantly lower incremental cost. CTTC is constantly battling the extreme high cost conditions of remote central Texas. In many cases, just breaking even on new services is a struggle. For CTTC to have to create an entirely new staff and affiliate to provide new services eliminates what was a tenuous economic incentive to begin with. In addition, unlike urban areas, rural communities have a limited talent pool of individuals from which to draw. The number of telecommunications professionals in Goldthwaite, Texas is finite. The Commission's proposal undermines CTTC's ability to take advantage of its personnel's expertise in providing telecommunications service to rural areas. Also, because CTTC is a cooperative, owned by its subscribers, creating a telecommunications affiliate with entirely separate officers and directors can be difficult.

With respect to the limitation on obtaining credit, this proposal would decimate CTTC's business plans for providing advanced services. Most banks that are willing to lend to rural telecommunications carriers require collateral. As is the case with most rural carriers, the core business that CTTC leverages is its wireline business. Without the ability to leverage its existing infrastructure, CTTC will not be able to invest in advanced services.

¹³ *Id.*

CTTC has limited resources and considers the separate building requirement¹⁴ a disincentive to investment. While the construction of an extra building can be an everyday occurrence for a Bell Company, it is a major capital consideration for a small company like CTTC. Most rural ILECs have one major building in town for an entire telecommunications operation. Asking rural ILECs to double their building capacity is antithetical to the Section 706 mandate to "remove barriers to infrastructure investment."¹⁵ The Commission's rules should eliminate such a waste of resources in high cost rural areas in order to allow rural ILECs to spend their limited capital on advanced telecommunications hardware rather than new buildings.

Because rural telephone companies, unlike Bell Companies, will not be able to establish feasible advanced services affiliates that meet the Commission's proposed separation requirements, any investment rural telephone companies make in advanced services will be subject to appropriation by other companies pursuant to Section 251(c). Under the Commission's proposal, packet switching facilities that must be acquired by CTTC for its LMDS business could potentially be subject to the competitively onerous requirements of Section 251(c). The Commission's proposed affiliate rules jeopardize not just CTTC's plans, but the very provision of advanced services in rural Texas, contrary to Section 706 of the Telecommunications Act of 1996.

2. Section 251(f) Does Not Provide the Regulatory Certainty Necessary to Encourage the Provision of Advanced Services in Rural Areas

¹⁴*Id.*

¹⁵47 U.S.C. § 706(a).

In order to encourage the deployment of advanced services according to the mandate of Section 706, the Commission must allow CTTC to do so through an affiliate that is not subject to the same onerous separation requirements as those imposed on the Bell Companies. Section 251(f)(1) which provides an exemption to rural telephone companies from Section 251(c) obligations¹⁶ is, regrettably, a tentative protection at best, subject to state removal at any time. Therefore, the Commission must provide rural ILECs like CTTC with the certainty necessary to ensure the deployment of advanced services. In essence, CTTC needs the same regulatory certainty that the Bell Companies have (unlike rural telephone companies) with the Commission's "alternative pathway."

¹⁶47 U.S.C. § 251(f)(1).

3. The FCC Should Continue its "Hands-Off" Internet Policy

In response to the Commission's questions regarding ILEC-related Internet Service Providers ("ISPs"),¹⁷ the Commission should be aware that in many rural areas, an ILEC-related ISP is the only game in town. In such cases, therefore, there is no worry that the affiliate will be favored over other ISPs. However, in other cases where a subscriber is unhappy with the advanced services provided by the ILEC-related ISP, they are always free to choose a neighboring ISP such as GTE. Additionally, any concerns related to potential anti-competitive or discriminatory conduct by the ILEC and its affiliate may be adequately addressed through a variety of legal avenues, thereby eliminating the need for additional and unnecessary regulation.

D. Rural ILECs Should be Permitted Flexibility in Transferring Network Elements and Other Assets to Their Advanced Services Affiliates

CTTC takes exception to the Commission's tentative conclusion that a wholesale transfer of facilities from an ILEC to its affiliate, which would be used to provide advanced services, would render the affiliate an assign of the ILEC and thereby subject the "affiliate" to the obligations of Section 251(c) of the Act.¹⁸ CTTC and all rural ILECs should be permitted the flexibility to make any and all necessary transfers of facilities, without subjecting their affiliates to §251 obligations because the facilities were at one time associated with the ILEC.

¹⁷ *NPRM* at ¶ 102.

¹⁸ *NPRM* at ¶ 104.

In addition, rural ILECs should be permitted to retain physical possession of any equipment transferred to their advanced services affiliates.¹⁹ Requiring CTTC to physically transfer equipment to an affiliate is a wasteful exercise similar to the separate building requirement. The time and money that would be expended in disconnecting, moving, reconnecting transmission and switching equipment is significant to a small company like CTTC. The campaign against high costs will be lost if CTTC must shuffle its equipment around to various new buildings.

5. The Commission Should Ease Loop Rules for Rural ILECs

In the *NPRM*, the Commission tentatively concluded that ILECs should provide requesting competitive local exchange carriers ("CLECs") with detailed information about loops via the ILECs' operations support systems ("OSS") so that a CLEC can make an independent determination about whether the loop is capable of supporting xDSL.²⁰ CTTC's rural loops are generally quite long and some may be incapable of supporting xDSL. Because CTTC's technicians and engineers are experts in working with long loops, deployed in the face of a variety of adverse conditions (*e.g.* terrain, weather, etc.), CLECs should rely on the expertise of CTTC and its employees in determining whether loops are adequately conditioned to support xDSL-based services. If a CLEC disputes CTTC's determination, the CLEC can always take its dispute to the state utility commission.

¹⁹ *Id.* at ¶ 110.

²⁰ *NPRM* at ¶ 157.

Concerning the Commission's proposal to adopt uniform national standards for attaching electronic equipment at the Central Office end of a loop,²¹ the Commission should take note that rural loops, rural Central Offices, and rural network configurations in general are anything but standard. Due to the unique environment where such facilities are deployed, rural networks are uniquely configured. National standards would not adequately address the unique nature of a CTTC's network. National standards would result in an increased regulatory burden on CTTC, which would be forced to comply with potentially inefficient and infeasible mandates.

6. InterLATA Relief for Bell Companies is Unnecessary

²¹ *NPRM* at ¶163.

Bell Companies such as US WEST would have the Commission believe "that many rural areas do not have high-capacity network access points."²² As previously noted, CTTC and most other rural ILECs are already providing advanced telecommunications services in rural areas. Despite the contentions of US WEST, most large carriers have no real interest in serving the needs of rural communities. In fact, US WEST's supposed concern with providing advanced services to rural areas is belied by its constant selling of non-upgraded rural exchanges which it deems unprofitable. Granting Bell Companies limited interLATA relief in rural areas would allow them to engage in "cream-skimming," at the expense of small rural ILECs which are already providing such services. There simply is no need for the Commission to modify LATA boundaries in rural areas. In the rare case that certain rural areas do not currently contain *any* high-speed network access points, Bell Companies could petition the Commission to provide service to those areas. In CTTC's specific case, allowing GTE to dip into CTTC territory through the relaxation of LATA boundaries would allow GTE to possibly target CTTC's most lucrative data customers. CTTC vehemently opposes interLATA relief and the implied Bell Company suggestion that rural areas are backward and in need of bailing out.

²² *NPRM* at ¶ 193, *citing* US WEST Petition at 8-24.

III. CONCLUSION

CTTC asks the Commission to recognize rural ILECs' achievements and commitment to the development of advanced rural telecommunications infrastructure in this proceeding. Section 706 charges the FCC to encourage broadband development by "removing barriers to infrastructure investment."²³ It is the rural telephone industry that will deliver advanced services to rural America, *provided the FCC removes the unintentional barriers to rural deployment it has proposed in this proceeding*. The proposed affiliate rule would be a true barrier and hindrance to CTTC's future plans to continue its infrastructure investment, contrary to the mandate of Section 706. CTTC and the rural telephone industry need a flexible and meaningful affiliate option to avoid the regulatory uncertainty of Section 251(c) obligations. InterLATA relaxation, which would stimulate Bell company cream-skimming of rare, rural lucrative high volume customers, is unnecessary and counterproductive to the goals of Section 706. Adoption of CTTC's suggestions will eliminate barriers to rural infrastructure investment and will

²³47 U.S.C. § 706(b).

encourage all rural ILECs to continue to deploy broadband infrastructure so that rural customers may have the same access and benefits from advanced networks as all Americans.

Respectfully submitted,

**CENTRAL TEXAS TELEPHONE
COOPERATIVE, INC.**

By: _____

Caressa D. Bennet
Michael R. Bennet

Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 530-9800

Its Attorneys

Dated: September 25, 1998